

REMARKS/ARGUMENTS

Claims 1-12 are pending, none of the claims having been amended.

In the outstanding Office Action, Claim 1 was rejected under 35 U.S.C. § 112, first paragraph; and Claims 1-12 were rejected as being unpatentable over Purnadi et al. (U.S. Patent No. 6,201,971, hereinafter Purnadi) in view of Dupont (U.S. Patent No. 5,729,542).

With regard to the rejection of Claim 1 under 35 U.S.C. § 112, first paragraph, Applicants respectfully traverse the rejection. The outstanding Office Action asserts that the addition of the language “based on a priority order for allocating the radio resource to the radio terminals or communication connections in said first group” is new matter. Applicants respectfully disagree. Adequate support is found throughout the specification, for example page 13, lines 4-12 in association with Figure 6, page 17, lines 4-16 and corresponding Figure 7, and page 16, lines 9-22 in correspondence with Figure 9. Therefore, it is respectfully submitted that the addition of this language to Claim 1 in the previously filed amendment did not raise an issue of new matter. Consequently, the withdrawal of the rejection of Claim 1 under 35 U.S.C. § 112, first paragraph, is respectfully requested.

A discussion of the invention defined by Claim 1 begins at page 11 of the Amendment filed January 17, 2006 and is incorporated herein by reference. In contrast to the invention defined by Claim 1, it is respectfully submitted that neither Purnadi nor Dupont whether taken individually or in combination renders obvious the invention of amended Claim 1. Moreover, the outstanding Office Action at paragraph 6, page 4, recognizes that Purnadi does not disclose the feature of “priority order ... in said first group.” In an attempt to cure this deficiency, the outstanding Office Action asserts Dupont for this feature. The outstanding Office Action asserts that Dupont teaches a first allocating part that allocates a radio resource to the radio terminals or communication connections in the first group with higher priority than the radio terminals or communication connections in the second group

based on a priority order for allocating the radio resource to the radio terminals or communication connections in the first group. The Office Action relies on the discussion in Dupont (column 9, line 64 through column 10, line 9) to cure this deficiency in Purnadi. The alleged motivation to combine the references is “because it provides a method and apparatus for accessing a communication system relies [sic] on the use of varying access probabilities for subscribers or messages of varying priority.”

Applicants respectfully traverse the Office Action’s characterization of Dupont. The language cited in the Office Action relates to Claim 9 in Dupont and includes a step of receiving an access control manager for the communication resource including a first persistence value for a first group of communication units and a second persistence value for a second group of communication units. Although this feature in Dupont describes separating communication units into first and second groups and identifying the first group as having a higher priority than the second group, this access priority is defined when a user is first established and is entirely not associated with the actual and required communication qualities.

Dupont does not associate the claimed priority order when actual communication qualities are favorable more than required communication qualities (claim element (a)) in Claim 1. Therefore it is respectfully submitted that Dupont does not disclose the claimed feature of “priority order ... in said first group”, which is a feature that the Office Action has stipulated is not present in Purnadi. As this feature is absent in both Purnadi and Dupont, it is respectfully submitted that the outstanding Office Action has not created a *prima facie* case of obviousness with regard to independent Claim 1. Each of the other Claims 2-12, while differing in claim scope and/or statutory class, are nevertheless believed to patentably define over Dupont and Purnadi for substantially the same reasons as discussed above with regard to Claim 1.

Consequently, in view of the foregoing comments it is respectfully submitted that the invention defined by Claims 1-12 is patentably distinguishing over the asserted prior art. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

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